

INTERSTATE COMMERCE COMMISSION

DEC 19 1988 4-4  
RECORDATION NO. 1 6095

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No.

Date

Fee \$

ICC Washington, D.C.

INTERSTATE COMMERCE COMMISSION

December 19, 1988

DEC 19 1988 4-4  
RECORDATION NO. 1 6095

Burlington Northern Railroad Company

Lease Financing Dated as of November 1, 1988

10.05% Conditional Sale Indebtedness Due 2006 and 2007

Dear Ms. McGee:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Burlington Northern Railroad Company, for filing and recordation, counterparts of each of the following documents:

1. (a) Conditional Sale Agreement and Indenture dated as of November 1, 1988, among The Connecticut Bank and Trust Company, National Association, as Owner Trustee, and General Motors Corporation (Electro-Motive Division) and M-K Industrial Services Company, as Builders; and

(b) Agreement and Assignment dated as of November 1, 1988, among General Motors Corporation (Electro-Motive Division) and M-K Industrial Services Company, as Builders, and Meridian Trust Company, as Indenture Trustee.

2. (a) Lease of Railroad Equipment dated as of November 1, 1988, between Burlington Northern Railroad Company, as Lessee, and The Connecticut Bank and Trust Company, National Association, as Owner Trustee; and

(b) Assignment of Lease and Agreement dated as of November 1, 1988, between The Connecticut Bank and Trust Company, National Association, as Owner Trustee, and Meridian Trust Company, as Agent.

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RECORDATION NO.

Filed 1425

8-355A-0-40

DEC 20 1988

26.00

ICC Washington, D.C.

HONEY LANE, CHEAPSIDE  
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TELEPHONE: 1-608-1421  
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Dec 19 4 31 PM '88

The names and addresses of the parties to the  
aforementioned agreements are as follows:

1. Indenture Trustee-Agent:

Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19601

2. Owner-Trustee:

The Connecticut Bank and  
Trust Company, National Association  
One Constitution Plaza  
Hartford, Connecticut 06115

3. Lessee:

Burlington Northern Railroad Company  
9401 Indian Creek Parkway  
Overland Park, Kansas 66210

4. Builders:

General Motors Corporation  
(Electro-Motive Division)  
La Grange, Illinois 60525

M-K Industrial Services Company  
4600 Apple Street  
Boise, Idaho 83705

Please file and record the documents referred to  
in this letter and index them under the names of the  
Indenture Trustee-Agent, the Owner Trustee, the Lessee and  
the Builders.

The equipment covered by the aforementioned  
documents is listed on Exhibit A attached hereto.

The equipment bears the legend "Ownership Subject  
to a Security Agreement Filed with The Interstate Commerce  
Commission".

There is also enclosed a check for \$26.00 payable  
to the Interstate Commerce Commission, representing the fee  
for recording the Conditional Sale Agreement and related  
Agreement and Assignment (together constituting one  
document), and the Lease of Railroad Equipment and related  
Assignment of Lease and Agreement (together constituting one  
document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments and this transmittal letter for your files. It is requested that the remaining counterparts of the documents be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
as Agent for Burlington  
Northern Railroad Company

Noreta R. McGee, Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)*</u>	<u>Estimated Unit Maximum Price</u>	<u>Estimated Total Maximum Price</u>	<u>Estimated Time and Place of Delivery</u>
Diesel- Electric Locomo- tives:	EMD		La Grange, Illinois					
GP-39-E or				25	BN-2750- 2799	\$660,000	\$16,500,000	1/2/89-12/15/89
					BN-2925- 2999			States set forth in the Certificate of Acceptance
GP-40-E					BN-3550- 3599			

\* Units delivered hereunder will bear road numbers within these series of road numbers. When deliveries have been completed, this page will be amended to show the actual numbers of the Units delivered.

Exhibit A

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)*</u>	<u>Estimated Unit Maximum Price</u>	<u>Estimated Total Maximum Price</u>	<u>Estimated Time and Place of Delivery</u>
Diesel- Electric Locomo- tives:	M-KIS	Exhibit "A", "B", and "C" to Agreement with Lessee dated 4/13/88.	Boise, Idaho	25	BN-2800-2924 BN-3500-3549	\$660,000	\$16,500,000	11/29/88- 12/28/88  States are indicated in the Certificate of Acceptance

\* Units delivered hereunder will bear road numbers within these series of road numbers. When deliveries have been completed, this page will be amended to show the actual road numbers of the Units delivered.

Exhibit A  
(cont.)

INTERSTATE COMMERCE COMMISSION

DEC 19 1988 4-40 PM

RECORDATION 1 6095 REG 1425

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[CS&M Ref. 4327-090]

CONDITIONAL SALE AGREEMENT AND INDENTURE

Dated as of November 1, 1988,

Among

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

M-K INDUSTRIAL SERVICES COMPANY

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## CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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CONDITIONAL SALE AGREEMENT AND INDENTURE dated as of November 1, 1988, among GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation, M-K INDUSTRIAL SERVICES COMPANY, a corporation (collectively "Builders" or severally "Builder" or collectively or severally "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and THE CONNECTICUT BANK AND TRUST COMPANY, National Association, not in its individual capacity but solely as Owner Trustee ("Owner Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with [FIRST BANK NATIONAL ASSOCIATION], a national banking association (the "Owner").

WHEREAS the Builders have severally agreed to sell and deliver to the Owner Trustee, and the Owner Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment");

WHEREAS the Owner Trustee is entering into a lease with BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("Lessee"), substantially in the form annexed hereto as Annex C ("Lease"); and

WHEREAS Meridian Trust Company, a Pennsylvania trust company ("Assignee") is acting as indenture trustee for certain investors pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement"), among the Lessee, the Assignee, the Owner Trustee, the Owner and the investors named in Appendix I thereto ("Investors"). (Capitalized terms used herein without definition shall have the meanings specified in the Participation Agreement.)

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth,

the parties hereto do hereby agree as follows:

## ARTICLE 1

### ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; CSA Assignment. The parties hereto contemplate that the Owner Trustee will furnish from 20% to 30 % of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the appropriate Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") among the Builders and the Assignee.

1.2. Lease Assignment. The Owner Trustee will assign to the Vendor, as security for the payment and performance of all the Owner Trustee's obligations hereunder, all right, title and interest of the Owner Trustee with certain exceptions in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has remanufactured the units of Equipment to be constructed by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder or Builders and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar terms, confers a right or imposes an obligation upon a corporation manufacturing and selling equipment hereunder, such right or obligation shall be construed to accrue to or to be enforceable against only the specific

corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

## ARTICLE 2

### CONSTRUCTION AND SALE

Pursuant to this Agreement, each Builder shall remanufacture its Equipment at its plant described in Annex B hereto and will sell and deliver its Equipment to the Owner Trustee, and the Owner Trustee will purchase from such Builder and accept delivery of and pay for its Equipment, each unit of which shall be remanufactured in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon between the applicable Builder and the Lessee (which specifications and modifications, if any, are hereinafter called "Specifications"). Each Builder represents and warrants that the design, quality and component parts of each unit of the Equipment to be delivered under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit.

## ARTICLE 3

### INSPECTION AND DELIVERY

3.1. Place of Delivery. Each Builder will deliver the units of the Equipment to the Owner Trustee at such places on the tracks of the Lessee designated from time to time by the Owner Trustee, freight charges and switching charges, if any, prepaid for the account of the Owner Trustee, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that neither Builder shall have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or the occurrence of any event of default (as described in Section 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, unless it has been assured to its satisfaction that it will

receive the full Purchase Price (as defined in Section 4.1 hereof) thereof. Each Builder agrees not to deliver any unit of its Equipment hereunder, and the Owner Trustee shall have no obligation to pay for any such unit, (a) until it receives notice from the Assignee that the conditions contained in Section 7 of the Participation Agreement have been met and from the Owner Trustee that the conditions contained in Section 8 of the Participation Agreement have been met, (b) following receipt of written notice from the Owner Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, until such time as such written notice may be canceled by a further written notice or (c) following receipt of written notice from the Assignee or the Owner Trustee of its determination that there has been a material adverse change in the business or financial condition of the Lessee from that shown in its balance sheet dated as of September 30, 1988.

3.2. Force Majeure. Each Builder's obligation as to time of delivery is subject to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of any government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, labor shortages, epidemics, quarantine restrictions, utility shortages or curtailments, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials, delays of carriers or subcontractors or late design changes requested by the Owner Trustee.

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to Section 3.1 hereof, any Equipment as to which a Closing does not occur hereunder for any reason, and any Equipment not delivered and accepted hereunder on or before December 28, 1989 (whether because of delays of the nature described in Section 3.2 hereof or otherwise), shall be excluded from this Agreement and the Owner Trustee shall be relieved of its obligations to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder of such Equipment and the Owner Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Section 3.3 or pursuant to Section 4.1 hereof, the Lessee will be obligated pursuant to Section 1 of the Participation Agreement to accept all such

units completed and delivered by a Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment ("Purchase Order") unless arrangements satisfactory to such Builder have otherwise been made for financing such units, and the Owner Trustee will reassign, transfer and set over to or upon the order of the Lessee all the right, title and interest of the Owner Trustee in and to the units so excluded. The delivery to and acceptance by or on behalf of the Owner Trustee of any unit of Equipment so excluded shall be ineffective, ab initio, to create in or transfer to the Owner Trustee any legal or beneficial right or interest in such unit or (except as provided in Section 4.1 hereof) to impose on the Owner Trustee any liability, obligation or responsibility with respect thereto.

3.4. Inspection. During remanufacture, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner Trustee (who will be agents of the Lessee), and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder will inspect the materials used in the remanufacture of the Equipment in accordance with the standard quality control practices of such Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to, or exceeds, the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner Trustee (who will be an agent of the Lessee) shall execute and deliver to the Builder of such Equipment a certificate of acceptance ("Certificate of Acceptance") stating, among other things, that such unit or units have been inspected and accepted on behalf of the Owner Trustee and are marked in accordance with Section 10.1 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Section 14.4 hereof. By Section 2 of the Lease, the Owner Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its agents, as aforesaid) pursuant to Section 2 of the Lease shall be deemed to be acceptance of such unit by the Owner Trustee.

3.5. Builder Responsibilities After Delivery. On delivery by a Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place

specified for delivery, such Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Section 14.4 hereof.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Designation of Equipment and Meaning of "Purchase Price"; Exclusion of Units. All units of Equipment delivered and accepted hereunder on or prior to December 28, 1988, shall be designated "Series A Equipment", all units of Equipment delivered and accepted hereunder after December 28, 1988, and on or prior to June 30, 1989, shall be designated "Series B Equipment" and all Equipment delivered and accepted hereunder after June 30, 1989, and on or prior to December 28, 1989, shall be designated "Series C Equipment". The term "Series" as used herein shall mean Series A, Series B or Series C Equipment. The maximum prices per unit of the Equipment are set forth in Annex B hereto. Such maximum prices are subject to such decrease as is agreed to by the Builder thereof and the Lessee. The term "Purchase Price" as used herein shall mean the maximum prices as so decreased. If on any Closing Date (as hereinafter defined in Section 4.2) the aggregate Purchase Price of Equipment of any Series for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the total Purchase Price specified in Annex B hereto for such Series, the Builder of such Equipment (and any assignee of such Builder) and the Owner Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said total Purchase Price, and the Owner Trustee shall have no further obligation or liability in respect of units so excluded. Any units so excluded shall be excluded in the reverse order of their acceptance hereunder.

4.2. Settlement and Closing Dates. The Owner Trustee and the Vendor shall enter into a supplement hereto promptly after final settlement for all units setting forth the road numbers of the units which are designated Series A, Series B and Series C Equipment. The Equipment shall be settled for in such number of groups of units of Equipment



as is provided in Item 2 of Annex A hereto. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The term "Closing Date" with respect to any Group shall be such date as is specified by the Lessee by at least six days' written notice thereof with the concurrence of the Owner Trustee, the Assignee and the Builder thereof. Such notice shall specify the aggregate Purchase Price of such group and the Series of Equipment involved and a copy thereof shall be sent by the Lessee to such Builder, the Assignee, the Owner Trustee and the Owner. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder thereof shall present to the Owner Trustee and the Lessee the invoices for the Equipment to be settled for, certified as to correctness by the Lessee. The closing on each Closing Date shall take place at the offices of Cravath, Swaine & Moore in New York, New York. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Reading, Pennsylvania, or St. Paul, Minnesota, are authorized or obligated to remain closed.

**4.3. Indebtedness of Owner Trustee to Vendor.**

Subject to the terms of this Agreement, the Owner Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to the Equity Percentage (as defined in Section 18 of the Participation Agreement) (the precise amount of the Equity Percentage to be set forth in an amendment hereto prior to such Closing) of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in various installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this Section (said portion of the Purchase Price payable in installments under this subparagraph (b) being hereinafter called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.

(1) The CSA Indebtedness used to pay for Series A Equipment shall be designated "Series A CSA Indebtedness", the CSA Indebtedness used to pay for Series B Equipment shall be designated "Series B CSA Indebtedness" and the CSA Indebtedness used to pay for Series C Equipment shall be designated "Series C CSA Indebtedness". The installments of the Series A CSA Indebtedness shall be payable on the dates set forth in Schedule I hereto. The unpaid balance of the Series A CSA Indebtedness shall bear interest at 10.05% per annum and such interest shall be payable on January 2 and July 2 each year, commencing on the dates set forth in Schedule I hereto. The installments of Series B CSA Indebtedness shall be payable on the dates set forth in Schedule I hereto. The unpaid balance of the Series B CSA Indebtedness shall bear interest at the rate per annum set forth in Schedule I hereto and such interest shall be payable on the dates set forth in Schedule I hereto. The installments of Series C CSA Indebtedness shall be payable on the dates set forth in Schedule I hereto. The unpaid balance of the Series C CSA Indebtedness shall bear interest at the rate per annum set forth in Schedule I hereto and such interest shall be payable on the dates forth in Schedule I hereto. The dates for the payment of installments of CSA Indebtedness are hereinafter called "Payment Dates" and the dates for the payment of interest on the CSA Indebtedness are hereinafter called "Interest Payment Dates". The rates of interest payable on the CSA Indebtedness are hereinafter called collectively the "Debt Rate" and individually the "applicable Debt Rate". The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date for each Series set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal for all Series shall completely amortize the CSA Indebtedness at maturity. The Assignee will furnish to the Vendor and the Lessee promptly after the last Closing Date an accurate and complete schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date and on each Interest Payment Date with respect to each Series.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next business day, and no interest shall be

payable thereon from and after the scheduled date for payment thereof to such next business day.

4.5. Calculation of Interest. Interest payable under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. Overdue Rate. The Owner Trustee will pay interest at the applicable Debt Rate plus 2% per annum ("Overdue Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment; Limitation on Prepayment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Owner Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due, except as provided in Article 7 hereof.

4.8. Liability of Owner Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.8), but not limiting the effect of Article 23 hereof, the liability of the Owner Trustee or any assignee of the Owner Trustee for all payments to be made by it under and pursuant to this Agreement (with the exception only of the payments to be made pursuant to Section 4.3(a) hereof and the amounts payable pursuant to the proviso to Section 13.3 hereof shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be required to be made by the Owner Trustee only to the extent that the Owner Trustee or any assignee of the Owner Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in Section 13.3 hereof, the Owner Trustee shall have no individual liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent

actually received by the Owner Trustee or any assignee of the Owner Trustee. In addition, the Vendor agrees that the Owner Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto), insofar as it relates to the Lessee or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(x) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner Trustee or any assignee of the Owner Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Section 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under Section 13 or any other provision of the Lease (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(y) at any other time only that portion of the amounts referred to in clauses (a) and (b) of the foregoing Section (x) (not including any amounts of Excluded Indemnity or any amounts paid by the Lessee to the Owner Trustee as reimbursement of sums paid by the Owner Trustee on account of prior defaults under Section 13.1(A) of the Lease) as are indefeasibly

received by the Owner Trustee or any assignee of the Owner Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in clauses (a) and (b) of the foregoing Section (x) which were received by the Owner Trustee or any assignee of the Owner Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner Trustee or any assignee of the Owner Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner Trustee for an amount in excess of the amounts payable by the Owner Trustee pursuant to the limitations set forth in this Section, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section.

## ARTICLE 5

### SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessories Are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Owner Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner Trustee

and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Owner Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Owner Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit or (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner Trustee without further transfer or action on the part of the Vendor or the Owner Trustee. However, the Vendor, if so requested by the Owner Trustee at that time, will at the Owner Trustee's sole cost and expense (a) execute an instrument releasing its security interest in the Equipment to the Owner Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner Trustee to the Equipment and (c) pay to the Owner Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeiture or damages for failure to execute and deliver such

instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner Trustee.

## ARTICLE 6

### ARTICLE 6. TAXES

#### 6.1. Indemnification for Nonincome Taxes.

Whether or not any of the transactions contemplated hereby are consummated, the Owner Trustee agrees to pay, and to indemnify and hold the Vendor, each Investor and their respective successors, assigns, agents and servants ("Indemnified Persons") harmless on an after-tax basis from, all taxes, assessments, withholdings, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner Trustee, the Lessor, the Owner, the Vendor, any Investor, the Lessee, the Trust Estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, subleasing, possession, use, operation, transfer of title, sale, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Agreement, the Trust Agreement, the Participation Agreement, the Lease, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however, with respect to each Indemnified Person: (i) Taxes (other than taxes in the nature of sales or use taxes) imposed on the net or gross income or gross receipts of such Indemnified Person (or franchise taxes imposed on such Indemnified Person to the extent that they are taxes in lieu of net income taxes) by the United States or by any state or political subdivision thereof in which such Indemnified Person's principal place of business is located or in which such Indemnified Person is subject to net income tax by reason of engaging in business in such jurisdiction (other than the leasing of

Equipment located therein); provided that Taxes of any foreign country or subdivision thereof incurred as a result of the Indemnified Person being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the Indemnified Person is entitled to a credit against its United States Federal income taxes; (ii) Taxes on any items of tax preference or any minimum tax; (iii) any Taxes imposed as a direct result of a voluntary or involuntary transfer or other disposition by the Trustee (other than in connection with the exercise of any remedy for an Event of Default which shall have occurred and be continuing at the time of such transfer or other disposition or any transfer or disposition by the Trustee resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Agreement, in each case other than with respect to a transfer or disposition to or at the request of the Lessee or any of its affiliates; (iv) Taxes imposed by any jurisdiction to the extent that such Taxes would not have been imposed on such Indemnified Person but for activities in such jurisdiction by such Indemnified Person commencing after the Closing Date and unrelated to the transactions contemplated hereby; (v) Taxes resulting from the misconduct or negligence of such Indemnified Person; (vi) Taxes in the nature of franchise taxes, value added taxes (other than in the nature of sales or use taxes), capital stock taxes, net worth taxes or taxes on doing business; (vii) Taxes incurred by such Indemnified Person as a result of its own bankruptcy; and (viii) any Taxes imposed on or measured by any fees or compensation received by the Investor or the Vendor; provided, however, that the Owner Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 6.2 hereof. The Owner Trustee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Owner Trustee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Owner Trustee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if (i) in the reasonable opinion of the Owner Trustee and the Vendor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Owner Trustee hereunder or of the Vendor under this



Agreement or (ii) the Owner Trustee provides a bond or other security reasonably satisfactory to the Owner Trustee and the Vendor.

6.2 Claims; Contests; Refunds. If claim is made against an Indemnified Person for any Taxes indemnified against under this Article 6, such Indemnified Person shall promptly notify the Owner Trustee. If reasonably requested by the Owner Trustee in writing, such Indemnified Person shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner Trustee, contest (or at such Indemnified Person's election and if permitted by law, permit the Owner Trustee to contest in the name of such Indemnified Person) in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. Notwithstanding the foregoing, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of an Indemnified Person in any such proceeding or action) unless (i) in the opinion of an Indemnified Person such contest or the nonpayment of the Taxes would not adversely affect the title, property or rights of the Indemnified Person hereunder or if these would be such an adverse effect, the Owner Trustee provides a bond or other security reasonably satisfactory to the Indemnified Person, and (ii) if the Indemnified Person contests the Tax by making payment thereof and conducting a refund proceeding, the Owner Trustee has advanced to such Indemnified Person as an interest-free loan and with no additional tax cost to such Indemnified Person an amount equal to the Taxes so paid. The Owner Trustee agrees to give each Indemnified Person reasonable notice of such contest prior to the commencement thereof. Notwithstanding the foregoing, the Indemnified Person shall not be required to contest, or to continue to contest, the Tax if such Indemnified Person waives its right to indemnification hereunder with respect to the Tax in issue provided that such waiver shall not as a matter of law jeopardize the ability of the Owner Trustee to contest the Tax with respect to a subsequent year should it be asserted in such other year. If any Indemnified Person shall obtain a refund of all or any part of such Taxes previously reimbursed by the

Owner Trustee in connection with any such contest or an amount representing interest thereon, such Indemnified Person, shall pay the Owner Trustee the amount of such refund or interest net of expenses; provided, however, that no such payment shall be required if an Event of Default or an event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing and the amount of such payment shall in no event exceed all amounts previously paid by the Owner Trustee to the appropriate Indemnified Person under this Article 6 reduced by all prior payments by such Indemnified Person to the Owner Trustee pursuant to this sentence.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Owner Trustee under or arising out of this Article 6 (except obligations resulting from the last sentence of Section 6.1), the Owner Trustee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns including exemption certificates or affidavits with respect to any sales or use tax, in such manner as to show the interest of the Vendor in the Units as shall be satisfactory to the Vendor or, where not so permitted, will notify the Lessor, the Vendor and the Owner of such requirement and will prepare and deliver such reports to the Lessor, the Owner and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including reasonable legal and accountants' fees and disbursements) of preparing any such return or report shall be borne by the Lessee.

6.4. Withholding. Notwithstanding anything herein to the contrary, all amounts received by the Investors shall be free of withholdings of any nature whatsoever, and in the event that any withholding is required, the Owner Trustee shall pay an additional amount such that the net amount actually received by the Lessor (or such other person entitled to receive such amounts under the Documents) after such withholding will equal the full amount of the payment then due. If the Owner Trustee has paid any such additional amount and the corresponding withholding tax is not indemnifiable by the Owner Trustee pursuant to Section 6.1, the Owner Trustee shall notify the Indemnified Persons of the amount of such additional payment and provide the Indemnified Person a receipt or other document appropriately evidencing the payment of such withholding tax. Within thirty (30) days of receipt of such notice and documentation, the Indemnified Person shall repay to the Owner Trustee such additional amount together with interest thereon from the

interest thereon from the date of the Owner Trustee's payment to the date of repayment at a rate equal to the Overdue Rate during such period.

6.5. Survival. All the obligations of the Owner Trustee under this Article 6 shall survive and continue, but only with respect to periods included in the term of this Agreement, notwithstanding payment in full of all amounts due under this Agreement or the termination of this Lease. Payments due from the Owner Trustee under this Article 6 shall be made directly to the party indemnified.

## ARTICLE 7

### MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. Subject to the limitations contained in Article 23 hereof, the Owner Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment as required by Section 11.1 of the Lease.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence (as defined in Section 7 of the Lease), the Owner Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in Section 7.1 of the Lease) with respect to such a Casualty Occurrence, the Owner Trustee shall, subject to the limitations contained in Section 4.8 hereof, pay to the Vendor a sum equal to the Casualty Value (as defined in Section 7.4 hereof) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon. Any money paid to the Vendor pursuant to this Section shall be applied on the date of such payment to prepay without penalty or premium the portion of the CSA Indebtedness of the Series in question being prepaid together with all interest accrued thereon.

7.3. Obligations upon Payment of Casualty Value. Upon payment by the Owner Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Lessee without further transfer or action on the part of the Vendor or the Owner Trustee, except that the Owner Trustee and the Vendor, if requested by the Lessee, will

execute and deliver to the Lessee, at the expense of the Lessee, an appropriate instrument confirming such passage to the Lessee of all the Owner Trustee's and the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Lessee may make clear upon the public records the title of the Lessee to such unit.

7.4. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in Section 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this Section, each payment of the Purchase Price of any Series of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment of such Series in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment of the Series in question.

## ARTICLE 8

### INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Owner Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9

### REPORTS AND INSPECTIONS

On or before April 1 in each year, commencing with the year 1989, the Owner Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in Section 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10

### MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Owner Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in Section 5 of the Lease. The Owner Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Owner Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in Section 10.1 hereof, the Owner Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee.

## ARTICLE 11

### COMPLIANCE WITH LAWS AND RULES

11.1. Compliance with Laws and Rules. During the term of this Agreement, the Owner Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any unit of the Equipment, the Owner Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Owner Trustee or the Lessee may in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12

### POSSESSION AND USE

12.1. Possession and Use of Equipment by Owner Trustee. The Owner Trustee shall be entitled, from and after delivery of the Equipment by the Builder to the Owner Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Owner Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease and the rights of the Lessee and its permitted assigns under the Lease shall, except as provided in Section 4.2 and Section 15.2 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be

amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the rights of the Lessee under the Lease, the Owner Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor which shall not be unreasonably withheld, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

## ARTICLE 13

### PROHIBITION AGAINST LIENS

13.1. Owner Trustee To Discharge Liens. The Owner Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner Trustee which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof and will promptly discharge any such lien, charge or security interest which arises; but the Owner Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent or being contested in good faith by appropriate proceedings, promptly commenced and diligently prosecuted.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. All obligations of the Owner Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Owner Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner Trustee, and to the extent that it receives funds sufficient for such purpose from the Owner as required by Section 17 of the Participation Agreement, from, through or under the Owner, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including all income taxes arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment), which, if not paid or discharged, could become a lien, charge or security interest on the Equipment or any unit thereof or the Vendor's interest in the Lease and the payments to be made thereunder; but the Owner Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in or to the Lease and the payments to be made thereunder.

## ARTICLE 14

### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Owner Trustee shall pay, and shall protect, indemnify and hold each Indemnified Person harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever (other than Taxes which are provided for in Article 6 hereof whether or not indemnified thereunder) which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of any Indemnified Matter (as defined in Section 12.1 of the Lease); except that the Owner Trustee shall not be liable to any Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from any tort (including strict liability or products liability in contract or tort), breach of warranty or failure to perform any



covenant hereunder of such Builder or is covered by such Builder's patent indemnification referred to in Section 14.4 hereof; and except that Indemnified Matters shall not include any such claims resulting from acts arising after the expiration of the original or any renewal term of the Lease. The Owner Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner Trustee may and, upon such Indemnified Person's request, will at the Owner Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Owner Trustee and approved by such Indemnified Person; and, in the event of any failure by the Owner Trustee to do so, the Owner Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner Trustee is required to make any payment under this Article 14, the Owner Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of any taxing jurisdiction, domestic or foreign (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Owner Trustee, and provided that no event of default set forth in Section 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, the Owner Trustee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner Trustee) as a result

of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee on behalf of the Owner Trustee shall be paid over to the Owner Trustee to the extent necessary to reimburse the Owner Trustee for indemnification payments previously made in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Owner Trustee Not Released if Equipment Damaged or Lost. The Owner Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. Builder Warranties and Patent Indemnities. The agreement of the parties relating to the Builder warranties of material and workmanship and the limitations of liability and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. Such warranties and patent indemnification shall be for the benefit of the Owner Trustee and the Lessee and their respective successors and assigns.

## ARTICLE 15

### ASSIGNMENTS

15.1. Assignment by Owner Trustee. Except as provided in Article VII of the Trust Agreement, the Owner Trustee will not (a) except as provided in Articles 7 and 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. Assignment by Vendor. Any and all of the rights, benefits and advantages of the Vendor under this

Agreement, including the right to receive the payments herein provided to be made by the Owner Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve a Builder from, any of the obligations of such Builder to construct and deliver its Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof or relieve the Owner Trustee of its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment, either the assignor or the assignee shall give written notice to the Owner Trustee, together with a counterpart or copy of such assignment, stating the identity and address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Owner Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Owner Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Owner Trustee arising out of any breach of any obligation of a Builder with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner

Trustee by such Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner Trustee against and only against such Builder.

## ARTICLE 16

### DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness.  
In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner Trustee shall fail to pay or cause to be paid in full the principal of and interest on the CSA Indebtedness or any Casualty Value payment when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner Trustee) and such default shall continue for 5 business days after receipt of written notice thereof by the Owner Trustee; provided, however, that any default under Section 16.1(e) which might be construed as a default under this Section 16.1(a) shall be construed as a default under Section 16.1(e); or

(b) the Owner Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; provided, however, that the continuation of such a failure for more than 30 days after such notice shall not constitute an event of default hereunder if (a) such failure is capable of being cured but cannot be cured within 30 days, (b) the Owner Trustee or the Lessee is diligently pursuing the cure of such failure, and (c) such failure does not impair in any material respect the Owner Trustee's interest in the Equipment or the security interest of the Vendor hereunder; or

(c) a petition for reorganization under any provision of Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Participation Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that all such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Owner Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner Trustee hereunder or under the Participation Agreement or of the Lessee under the Lease or under the Participation Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations of the Owner Trustee or the Lessee, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceeding in such manner that all such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) any Event of Default under the Lease (other than in respect of Excluded Payments and Rights as defined in the Lease Assignment) shall have occurred

and be continuing unless the Owner Trustee shall have cured such Event of Default and the corresponding event of default hereunder within the later to occur of (1) the expiration of the applicable grace period hereunder, or (2) the seventh day following the giving of written notice to the Owner Trustee that such Event of Default has occurred and is continuing; provided, however, that if more than six Events of Default or if more than three consecutive Events of Default shall have occurred under clause (A) of Section 13.1 of the Lease which corresponds to an event of default under Section 16.1(a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner Trustee, the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate to the extent legally enforceable, and/or, (ii) subject to the Lessee's rights of possession, use and assignment under Sections 4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Owner Trustee acknowledges the right of the Vendor to terminate the term of the Lease) and the Vendor may exercise the other remedies provided in Article 17 hereof; provided, however, that such termination shall not be in derogation of or impair the rights of the Owner Trustee or the Vendor (under the Lease Assignment), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner Trustee or the Vendor (under the Lease Assignment), as the case may be, to sue for and recover damages provided for in Section 13 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner Trustee, subject to the provisions

of Articles 4 and 23 hereof, wherever situated. The Owner Trustee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. In the case of the Owner Trustee, knowledge shall mean actual knowledge of an officer or employee in its Corporate Trust Department.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, it is agreed by the Owner Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. Subject to the provisions of Section 16.1 hereof and the Lessee's rights of possession, use and assignment under Sections 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by the Indenture Trustee or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Owner Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other

facilities or means of the Owner Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to Section 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Owner Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Owner Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Owner Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.



17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, upon such notice and consent as hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner Trustee and the Lessee addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and the Owner Trustee consents thereto in writing, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner Trustee; provided further, that if the Owner Trustee does not consent to the retention of the Equipment or if the Lessee or any other person notified under the terms of this Section objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Owner Trustee's Right of Redemption. Subject to the provisions of Section 16.1 hereof and the Lessee's rights of possession, use and assignment under Sections 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon not less than 10 days notice to the Owner Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the

Equipment, or one or more of the units thereof, free from any and all claims of the Owner Trustee, the Lessee or any other party claiming from, through or under the Owner Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if prior to such sale and prior to the making of a contract for such sale, the Owner Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner Trustee. In the event of any such purchase by the Owner Trustee, the Vendor shall assign to the Owner Trustee any and all of the Vendor's rights against the Lessee for any costs and expenses incurred in the Vendor's exercise of its remedies with respect to such Equipment. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Owner Trustee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner Trustee and the Lessee shall be given written notice of such sale not less than 10 days prior thereto addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to

the rights of the Owner Trustee to purchase and the rights of the Lessee and the Owner Trustee to provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. Upon the request of the Owner Trustee, the Vendor shall inform the Owner Trustee of the status of any proposed sale or other disposition of the Equipment. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner Trustee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner Trustee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner Trustee shall, subject to the limitations of Section 4.8 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Owner Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the

limitations of Section 4.8 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner Trustee.

17.8. Expenses. The Owner Trustee will pay all reasonable fees and expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorney's fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this Section shall be subject to the limitations set forth in Section 4.8 and Article 23 hereof.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

17.10. Limitations. Notwithstanding any provision hereof to the contrary, the Vendor agrees that, before it shall proceed to foreclose the lien of this Agreement, the Vendor shall, to the extent that it is then entitled to do so under the Lease and is not then stayed or otherwise prevented from doing so by operation of law or otherwise, first proceed to exercise one or more of the remedies provided in the Lease as it shall determine in its sole discretion; and if any such exercise of remedies under the Lease is stayed by Section 362 or 363 of the Bankruptcy Code, the Vendor shall refrain from exercising any remedy hereunder which would foreclose the lien of this Agreement until such stay of such remedy under the Lease shall be relieved pursuant to Section 1168 of the Bankruptcy Code or otherwise.

## ARTICLE 18

### APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without

modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Owner Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19

### RECORDING

Subject to the provisions of Article 23 hereof, the Owner Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to The Railway Act of Canada; and the Owner Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES OF BUILDER

Each Builder hereby represents and warrants to the Owner Trustee, its successors and assigns, that this Agreement is duly authorized, executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Owner Trustee, this Agreement is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms.

## ARTICLE 21

### ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Section Headings for Convenience Only. All article and Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the respective rights of the Vendor and the Owner Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner Trustee.

## ARTICLE 22

### NOTICE

Any notice required or permitted to be given by any party hereto to any other party or parties shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a Business Day, otherwise on the next Business Day), if transmitted by mail, telex,

telecopy or similar transmission, or by hand, addressed as follows:

(a) to the Owner Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with a copy to the Owner at its address set forth in Appendix II to the Participation Agreement;

(b) to a Builder, at its address specified in Item 1 of Annex A hereto; and

(c) to any assignee of the Vendor, or the Owner Trustee, at such address as may have been furnished in writing to the Owner Trustee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties.

## ARTICLE 23

### NO RECOURSE AGAINST CERTAIN PERSONS; SATISFACTION OF UNDERTAKINGS; NO INDIVIDUAL LIABILITY OF OWNER TRUSTEE

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Owner Trustee under Sections 7.1, the first sentence of Section 7.2, Sections 17.2, 17.7 and 17.8 hereof and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed indefeasibly and irrevocably satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in Section 13.3 thereof) and shall not be chargeable against the Owner Trustee in any circumstances

whatsoever, including any voidness of any provision hereof, including this Section 23.2, upon the Lessee's execution and delivery of the Lease. The Owner Trustee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for a default. Until the security interest of the Vendor is discharged as provided in Article 5 of this Agreement, no waiver or amendment of the Lessee's undertaking under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Owner Trustee increasing or decreasing the rentals or casualty values payable pursuant to Sections 3 and 7 of the Lease to the extent permitted by the Indemnity Agreement or Section 3.1 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor, together with a certificate of the Owner Trustee certifying to the Vendor that such increase or decrease is in accordance with the provisions of the Indemnity Agreement or Section 3.1 of the Lease and the adjusted amounts set forth in such agreement have not been reduced below those necessary to satisfy the obligations of the Owner Trustee hereunder.

23.3. No Individual Liability of Owner Trustee. Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Owner Trustee are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution individually but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Owner Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no individual liability or individual responsibility is assumed hereunder by or shall at any time be asserted or enforceable against said financial institution on account of any representation, warranty or agreement hereunder of the Owner Trustee (except for the obligations of the Owner Trustee to comply with the provisions of the proviso of Section 13.3 hereof and for the gross negligence or wilful misconduct of the Owner Trustee); either expressed or implied, all such individual liability, if any, being expressly waived and released by the Vendor



and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner Trustee (provided that, except as aforesaid, the Owner Trustee in its fiduciary or individual capacity shall not have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Owner Trustee) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Owner Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 24

##### LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and Section 86 of The Railway Act of Canada such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof as shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 25

##### EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to

be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. Each Builder and the Owner Trustee shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Agreement or to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President

Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

M-K INDUSTRIAL SERVICES COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

~~the date first above written.~~


GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

  
\_\_\_\_\_  
Vice President

Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

M-K INDUSTRIAL SERVICES COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION  
as Owner Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

~~the date first above written.~~

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President


Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

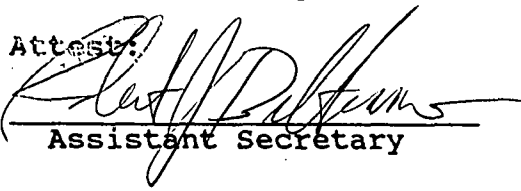
M-K INDUSTRIAL SERVICES COMPANY,

by

  
\_\_\_\_\_  
President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION  
as Owner Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

M-K INDUSTRIAL SERVICES COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION  
as Owner Trustee as aforesaid,

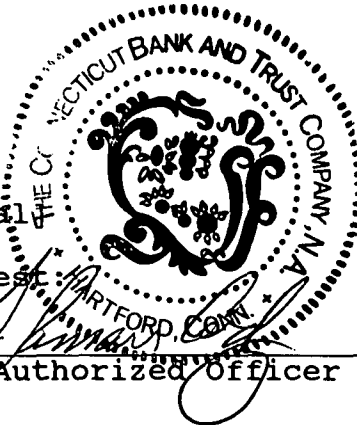
by

Authorized Officer

[Seal]

Attest:

Authorized Officer



STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of November 1988, before me personally appeared Clyford J. Vaughan, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Juanita Acantilado  
Notary Public

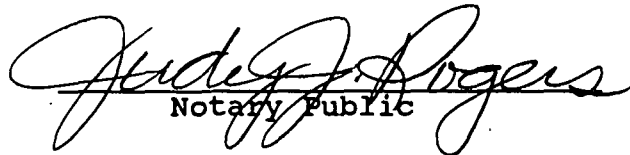
(Notarial Seal)

My Commission expires



STATE OF IDAHO,     )  
                              ) ss.:  
COUNTY OF ADA     ,     )

On this 21st day of November 1988, before me personally appeared Leon D. Stoddard, to me personally known, who, being by me duly sworn says that he is the President of M-K INDUSTRIAL SERVICES COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

(Notarial Seal)

My Commission expires 3-3-93

STATE OF CONNECTICUT, )  
                              ) ss.:  
COUNTY OF HARTFORD,     )

On this        day of November 1988, before me personally appeared                               , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission expires

STATE OF NEW YORK,           )  
                                  ) SS.:  
COUNTY OF NEW YORK,        )

On this 14th day of December, 1988, before me personally appeared Mason Lemont to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.



(Notarial Seal)

Barbara Mulroy  
Notary Public



SCHEDULE I

10.05% Interest Rate  
Allocation Schedule of Each \$10,000,000  
of CSA Indebtedness Payable  
Series A

	DATE	DEBT SERVICE	INTEREST	PRINCIPAL	BALANCE
7/	2/1989	513666.67 *	513666.67 *	0.00	10000000.00
1/	2/1990	502500.00	502500.00	0.00	10000000.00
7/	2/1990	502500.00	502500.00	0.00	10000000.00
1/	2/1991	502500.00	502500.00	0.00	10000000.00
7/	2/1991	538282.63	502500.00	35782.63	9964217.37
1/	2/1992	500701.92	500701.92	0.00	9964217.37
7/	2/1992	1662867.02	500701.92	1162165.10	8802052.27
1/	2/1993	442303.13	442303.13	0.00	8802052.27
7/	2/1993	718438.22	442303.13	276135.09	8525917.18
1/	2/1994	428427.34	428427.34	0.00	8525917.18
7/	2/1994	732314.01	428427.34	303886.67	8222030.50
1/	2/1995	413157.03	413157.03	0.00	8222030.50
7/	2/1995	747584.32	413157.03	334427.28	7887603.22
1/	2/1996	396352.06	396352.06	0.00	7887603.22
7/	2/1996	764389.29	396352.06	368037.22	7519566.00
1/	2/1997	1418683.87	377858.19	1040825.68	6478740.32
7/	2/1997	325556.70	325556.70	0.00	6478740.32
1/	2/1998	664360.41	325556.70	338803.71	6139936.60
7/	2/1998	308531.81	308531.81	0.00	6139936.60
1/	2/1999	819866.25	308531.81	511334.44	5628602.17
7/	2/1999	282837.26	282837.26	0.00	5628602.17
1/	2/2000	795867.45	282837.26	513030.19	5115571.98
7/	2/2000	257057.49	257057.49	0.00	5115571.98
1/	2/2001	800290.58	257057.49	543233.09	4572338.89
7/	2/2001	229760.03	229760.03	0.00	4572338.89
1/	2/2002	805242.45	229760.03	575482.42	3996856.47
7/	2/2002	200842.04	200842.04	0.00	3996856.47
1/	2/2003	810557.04	200842.04	609715.00	3387141.47
7/	2/2003	170203.86	170203.86	0.00	3387141.47
1/	2/2004	1246682.24	170203.86	1076478.38	2310663.09
7/	2/2004	116110.82	116110.82	0.00	2310663.09
1/	2/2005	1302573.05	116110.82	1186462.23	1124200.86
7/	2/2005	56491.09	56491.09	0.00	1124200.86
1/	2/2006	1180691.95	56491.09	1124200.86	0.00
7/	2/2006	0.00	0.00	0.00	0.00
		.....	.....	.....	
	TOTALS	21158190.03	11158190.03	10000000.00	

\* Interest only to the extent accrued will be payable on this date.

SCHEDULE I

10.05% Interest Rate  
Allocation Schedule of Each \$10,000,000  
of CSA Indebtedness Payable  
Series B

DATE	DEBT SERVICE	INTEREST	PRINCIPAL	BALANCE
7/ 2/1989	5583.33 *	5583.33 *	0.00	10000000.00
1/ 2/1990	502500.00	502500.00	0.00	10000000.00
7/ 2/1990	502500.00	502500.00	0.00	10000000.00
1/ 2/1991	502500.00	502500.00	0.00	10000000.00
7/ 2/1991	502500.00	502500.00	0.00	10000000.00
1/ 2/1992	559811.09	502500.00	57311.09	9942688.91
7/ 2/1992	1753095.32	499620.12	1253475.20	8689213.71
1/ 2/1993	436632.99	436632.99	0.00	8689213.71
7/ 2/1993	691462.33	436632.99	254829.34	8434384.37
1/ 2/1994	423827.81	423827.81	0.00	8434384.37
7/ 2/1994	704267.50	423827.81	280439.69	8153944.68
1/ 2/1995	409735.72	409735.72	0.00	8153944.68
7/ 2/1995	718359.60	409735.72	308623.88	7845320.80
1/ 2/1996	394227.37	394227.37	0.00	7845320.80
7/ 2/1996	733867.95	394227.37	339640.58	7505680.22
1/ 2/1997	1378783.17	377160.43	1001622.74	6504057.49
7/ 2/1997	326828.89	326828.89	0.00	6504057.49
1/ 2/1998	860969.51	326828.89	534140.62	5969916.87
7/ 2/1998	299988.32	299988.32	0.00	5969916.87
1/ 2/1999	756657.36	299988.32	456669.04	5513247.83
7/ 2/1999	277040.70	277040.70	0.00	5513247.83
1/ 2/2000	773849.66	277040.70	496808.95	5016438.88
7/ 2/2000	252076.05	252076.05	0.00	5016438.88
1/ 2/2001	778545.56	252076.05	526469.50	4489969.37
7/ 2/2001	225620.96	225620.96	0.00	4489969.37
1/ 2/2002	783488.72	225620.96	557867.76	3932101.61
7/ 2/2002	197588.11	197588.11	0.00	3932101.61
1/ 2/2003	889782.99	197588.11	692194.89	3239906.72
7/ 2/2003	162805.31	162805.31	0.00	3239906.72
1/ 2/2004	1215977.85	162805.31	1053172.54	2186734.18
7/ 2/2004	109883.39	109883.39	0.00	2186734.18
1/ 2/2005	1268899.77	109883.39	1159016.38	1027717.80
7/ 2/2005	51642.82	51642.82	0.00	1027717.80
1/ 2/2006	1079360.62	51642.82	1027717.80	0.00
7/ 2/2006	0.00	0.00	0.00	0.00
TOTALS	20530660.79	10530660.79	10000000.00	

\* Interest only to the extent accrued will be payable on this date.

SCHEDULE I

10.05% Interest Rate  
Allocation Schedule of Each \$10,000,000  
of CSA Indebtedness Payable  
Series C

DATE	DEBT SERVICE	INTEREST	PRINCIPAL	BALANCE
1/ 2/1990	47458.33 *	47458.33 *	0.00	10000000.00
7/ 2/1990	502500.00	502500.00	0.00	10000000.00
1/ 2/1991	502500.00	502500.00	0.00	10000000.00
7/ 2/1991	502500.00	502500.00	0.00	10000000.00
1/ 2/1992	502500.00	502500.00	0.00	10000000.00
7/ 2/1992	614438.34	502500.00	111938.34	9888061.65
1/ 2/1993	1762568.90	496875.10	1265693.80	8622367.85
7/ 2/1993	433273.98	433273.98	0.00	8622367.85
1/ 2/1994	701275.26	433273.98	268001.28	8354366.57
7/ 2/1994	419806.92	419806.92	0.00	8354366.57
1/ 2/1995	714742.32	419806.92	294935.40	8059431.17
7/ 2/1995	404986.42	404986.42	0.00	8059431.17
1/ 2/1996	729562.83	404986.42	324576.41	7734854.76
7/ 2/1996	388676.45	388676.45	0.00	7734854.76
1/ 2/1997	745872.79	388676.45	357196.34	7377658.41
7/ 2/1997	370727.34	370727.34	0.00	7377658.41
1/ 2/1998	695846.13	370727.34	325118.79	7052539.62
7/ 2/1998	1240402.73	354390.12	886012.61	6166527.01
1/ 2/1999	309867.98	309867.98	0.00	6166527.01
7/ 2/1999	773609.11	309867.98	463741.13	5702785.88
1/ 2/2000	286564.99	286564.99	0.00	5702785.88
7/ 2/2000	773607.60	286564.99	487042.61	5215743.27
1/ 2/2001	262091.10	262091.10	0.00	5215743.27
7/ 2/2001	777932.88	262091.10	515841.78	4699901.49
1/ 2/2002	911061.54	236170.05	674891.49	4025010.00
7/ 2/2002	202256.75	202256.75	0.00	4025010.00
1/ 2/2003	1236379.20	202256.75	1034122.45	2990887.56
7/ 2/2003	150292.10	150292.10	0.00	2990887.56
1/ 2/2004	1293842.61	150292.10	1143550.51	1847337.04
7/ 2/2004	92828.69	92828.69	0.00	1847337.04
1/ 2/2005	1357386.65	92828.69	1264557.96	582779.08
7/ 2/2005	29284.65	29284.65	0.00	582779.08
1/ 2/2006	612063.73	29284.65	582779.08	0.00
7/ 2/2006	0.00	0.00	0.00	0.00
1/ 2/2007	0.00	0.00	0.00	0.00
TOTALS	20348708.33	10348708.33	10000000.00	

\* Interest only to the extent accrued will be payable on this date.

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Item 1. General Motors Corporation (Electro-Motive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 ("EMD").

(b) M-K Industrial Services Company, a corporation, having an address at 4600 Apple Street, Boise, Idaho 83705. ("M-KIS").

Item 2. The Series A Equipment shall be settled for on December 28, 1988, the Series B Equipment shall be settled for on June 29, 1989, and the Series C Equipment shall be settled for on December 14, 1989, unless the parties otherwise agree.

Item 3. (a) EMD's warranties as to its Equipment are set forth in its Purchase Order and are incorporated herein as if set forth in full herein. The Lessee, the Owner Trustee and the Indenture Trustee have each been furnished with a copy of such warranties.

(b) M-KIS warranties as to its Equipment are set forth in its Purchase Order and are incorporated herein as if set forth in full herein. The Lessee, the Owner Trustee and the Indenture Trustee have each been furnished with a copy of such warranties.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP EXPRESSED OR IMPLIED, MADE BY EACH SUCH BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4. Each Builder shall defend any suit or proceeding brought against the Owner Trustee, the Lessee and/or each assignee of such Builder's rights under this Agreement so far as the same is based on a claim that its Equipment, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at such Builder's expense) for the defense of same, and such Builder shall pay all damages and costs awarded therein against the Owner Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and

the use of such unit or part is enjoined, such Builder shall at its option and at its own expense either procure for the Owner Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing.

Such Builder will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of such Builder for patent infringement by its Equipment or any part thereof.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)*</u>	<u>Estimated Unit Maximum Price</u>	<u>Estimated Total Maximum Price</u>	<u>Estimated Time and Place of Delivery</u>
Diesel- Electric Locomo- tives:	EMD		La Grange, Illinois					
GP-39-E or				25	BN-2750- 2799	\$660,000	\$16,500,000	1/2/89-12/15/89
					BN-2925- 2999			States set forth in the Certificate of Acceptance
GP-40-E					BN-3550- 3599			

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\* Units delivered hereunder will bear road numbers within these series of road numbers. When deliveries have been completed, this page will be amended to show the actual numbers of the Units delivered.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)*</u>	<u>Estimated Unit Maximum Price</u>	<u>Estimated Total Maximum Price</u>	<u>Estimated Time and Place of Delivery</u>
Diesel- Electric Locomo- tives:	M-KIS	Exhibit "A", "B", and "C" to Agreement with Lessee dated 4/13/88.	Boise, Idaho	25	BN-2800-2924 BN-3500-3549	\$660,000	\$16,500,000	11/29/88- 12/28/88 States are indicated in the Certificate of Acceptance

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\* Units delivered hereunder will bear road numbers within these series of road numbers. When deliveries have been completed, this page will be amended to show the actual road numbers of the Units delivered.